

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 843-720-5270

463 KING STREET, SUITE B
CHARLESTON, SC 29403-7204

Facsimile 843-414-7039

September 19, 2018

VIA E-MAIL

Ms. Elizabeth Williams
U.S. Army Corps of Engineers
ATTN: REGULATORY DIVISION
69A Hagwood Avenue
Charleston, SC 29403
Elizabeth.G.Williams@usace.army.mil

Re: Application P/N SAC 2016-756 for Proposed Development of the Cainhoy Plantation

Dear Ms. Williams:

The South Carolina Coastal Conservation League (the "Conservation League") submits this letter commenting on the above referenced Joint Permit Application for a Clean Water Act Section 404 permit. The Applicants are planning to develop a 9,375 acre tract, known as the Cainhoy Plantation, located within the City of Charleston and Berkeley County on both the north and south sides of Clements Ferry Road. The Cainhoy property is bordered by the Wando and Cooper Rivers, and the Francis Marion National Forest. The Applicants propose to develop a mixed-use community with residences, public schools, retail shops, restaurants, and office space. The project proposes to discharge fill material into 185.25 acres of freshwater wetlands and 2.65 acres of critical area wetlands. The Applicants have requested a 50-year permit term for the project.

The Conservation League has participated in past conversations with the landowners regarding the project, and believes that there are additional opportunities for the landowners to identify areas of the Cainhoy property for further protection. The Cainhoy property possesses valuable ecological resources, making it one of the most environmentally significant properties under threat of development in coastal South Carolina. It contains extensive mature Loblolly and Longleaf pine forest areas and over 2,000 acres of wetlands. The property is also adjacent to the Francis Marion National Forest and provides important habitat for a variety of species, including federally threatened and endangered species. Because of the property's critical environmental importance, the Conservation League has serious concerns about the proposed development project. The Conservation League appreciates the opportunity to submit the following comments to the Corps that identify key issues raised by the application materials, and the Conservation League remains interested in working with the Applicants to identify a

proposal that balances the Applicants' needs and appropriate protections for the site and surrounding resources.¹

I. Environmental Impact Statement

Under the National Environmental Policy Act ("NEPA"), a federal agency must prepare an environmental impact statement ("EIS") prior to any major federal action that significantly affects the quality of the human environment. 42 U.S.C. § 4332(2)(C). An agency's analysis under NEPA must account for all direct, indirect, and cumulative environmental impacts of the proposed action. 40 C.F.R. §§ 1501.2(b), 1508.8, 1508.27(b)(7). When evaluating whether a major federal action significantly impacts the quality of the environment, an agency should consider a variety of factors, including the unique characteristics of an area such as its "proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas." 40 C.F.R. § 1508.27(b)(3).

An EIS should be conducted for development on the Cainhoy property based on the scale of the project and the magnitude of the impacts to valuable environmental and cultural resources. The Cainhoy property is 9,375 acres in total, including 2,478 acres of wetlands, and the proposed development will impact 187.9 acres of those wetlands. The Cainhoy property shares a two-mile border with the 250,000-acre Francis Marion National Forest, which is home to a variety of endangered, threatened, or at-risk animal and plant species. A broad plateau of old-growth Longleaf pine forest stretches from the National Forest across the northern portion of the Cainhoy property, providing habitat for at least 17 endangered Red-Cockaded Woodpecker ("RCW") groups as well as for populations of other endangered, threatened, and at-risk species such as Gopher Frogs and Flatwoods Salamanders. Cainhoy Plantation is also part of the historic Cooper River Corridor and the heart of surviving local Gullah heritage and culture. The Plantation is believed to harbor a trove of Native American archeological sites, colonial roads with mile markers to the Calais-Dover Ferry site, numerous historic houses, cemeteries, and churches, including the St. Thomas St. Denis Church, which is listed on the National Register of Historic Places. A decision to grant the requested permit for a large-scale development impacting the above resources would constitute a major federal action significantly affecting the quality of the environment, thereby requiring an EIS.

The preparation of an EIS will also provide multiple opportunities for meaningful public involvement in the permit process. 40 C.F.R. §§ 1501.7(a)(1), 1503.1(a)(4), 1506.6(c). Although the Conservation League has had the opportunity to discuss the project with the landowners during the planning process, the local community has not had the same opportunity. The public has a significant interest in the development of the Cainhoy property. The EIS process will provide an opportunity for the local community to voice their opinions and provide meaningful comments on the continued evolution of this project. Such a large-scale project will ultimately benefit from the contributions of public and agency comments that are part of the EIS process. The project's purpose of creating a "conservation minded, environmentally sensitive, true mixed use development" will be best served by greater public participation and a thorough

¹ The Conservation League understands that some details of the proposed project may change based on future submissions by the Applicants. The Conservation League is providing the following comments on the proposed project based on the currently publically available information submitted by the Applicants.

evaluation of the direct, indirect, and cumulative impacts on the environment through preparation of an EIS.

II. Requested 50-Year Permit Term

The Applicants are requesting a 50-year term Section 404 permit from the Corps to develop the project, “based on the phased construction and time required to complete the proposed project.” Joint Public Notice at 2. The proposed length of this permit is highly unusual and far too long. We cannot recall any other Section 404 permit issued by the Charleston District that includes such a timeframe. The Applicants also have not provided a sufficient rationale that supports the issuance of a 50-year permit other than the vague reference to “phased construction.” A permit authorizing wetland impacts over the course of 50 years fails to account for the significant potential changes that could occur in that time, such as changes in sea level, species habitat, erosion, or community needs. It is impossible for the Corps to fully consider the impacts of a proposed project with such an extreme permit term. A 50-year permit also does not realistically allow for the public to comment on the full potential impacts of the proposed project because the Applicants have not, and cannot, fully account for the potential changes over that lengthy time period that could affect the impacts of the proposed project. Accordingly, the Conservation League suggests that the permit term be reduced to a more reasonable time period. At the very least, a 50-year permit should include a reopener provision that allows for meaningful public comment on the ongoing project at reasonable intervals, such as every 10 years. This will allow the public, the Corps, and the Applicants to reevaluate the impacts of such a large-scale and long-term project.²

Additionally, the proposed project concentrates development on the southern portion of the Cainhoy property, much of which falls within the 100-year floodplain. Given that this permit would span the next half century and a substantial portion of the proposed development is within the floodplain, future sea level conditions over the life of the permit must be considered to ensure the safety of the future community. Measurements in Charleston Harbor show that sea level has risen over 1 foot in the past century and is continuing to rise.³ Based on the latest localized sea level rise projections, even the most conservative scenarios show 0.4 meters, or 1.3 feet, of sea level rise by 2070.⁴ After thorough research, in 2015 the City of Charleston chose to assess investments and planning for the next 50 years using a 1.5 to 2.5 foot range of sea level rise.⁵ Specifically, the “2.5 foot increase will be used for more critical longer term investments, such as emergency routes and public buildings,” both of which are found within the Cainhoy Property.⁶

² The Conservation League understands that the Applicants may be modifying the application to propose a 30-year permit term. The Conservation League believes a 30-year permit term still presents the same problems as a 50-year term, and suggests that the term be reduced to a more reasonable time period.

³ NOAA Tides and Currents <https://tidesandcurrents.noaa.gov/sltrends/>

⁴ There is a high statistical probability of sea level exceeding the 2017 NOAA low and intermediate low scenarios due to the scenarios representing a world with massive emission reductions and climate mitigation. NOAA 2017.

⁵ The NOAA 2017 Intermediate High range used to inform the City of Charleston’s planning was updated in 2017 and increased to show over 3 feet of rise by 2065. City of Charleston Sea Level Rise Strategy, 2015.

⁶ The site features multiple routes that will be used for evacuation and public buildings including existing schools and future fire stations.

Failure to consider the design of new developments in the floodplain has proved disastrous even under present day sea level, as felt by homeowners in Charleston neighborhoods who were flooded by storms three years in a row.⁷ Last year during Hurricane Irma, the Cooper River gauge, just downstream of the proposed development, measured a storm surge 4.5 feet over high tide, further illustrating the threat of sea level rise and storm surge with respect to this proposal. Failure to consider these issues here would be unwise. Moreover, there is not only significant risk present but also a community context for evaluating the impacts of sea level rise on this project. Planning for these impacts now not only helps to prevent hazards down the road but also saves money — for every \$1 spent on mitigation, the nation saves \$6 in future disaster costs.⁸ Mitigation appropriate for the Cainhoy development could include measures such as elevating homes beyond minimum freeboard, elevating infrastructure, and continuing to avoid water absorbent wetlands to the maximum extent possible in planning. The Stormwater Master Plan featured in the permit application makes mention of various BMPs such as bioswales, pervious pavement, and stormwater gardens. Including those features to the most innovative extent possible would also help to mitigate additional flooding and improve the overall resilience of the community.

The public interest review requirement for the issuance of a Section 404 permit also supports the need to consider these critical resiliency issues. The decision of whether to issue a Section 404 permit must be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest. 33 C.F.R. § 320.4(a)(1). This public interest review requires the Corps to carefully weigh all factors which may be relevant to the proposal, balancing benefits against reasonably foreseeable detriments. *See id.* The regulations list flood hazards, floodplain values, and shore erosion and accretion as factors that must be considered as part of a public interest review if relevant to the project. *See id.* The potential for flooding caused by sea level rise and increased storm surge is clearly a relevant factor that must be considered as part of the public interest review for a 50-year permit proposing substantial development within the 100-year floodplain.

Additionally, the Corps' issuance of a Section 404 permit must comply with the Clean Water Act Section 404(b)(1) Guidelines. 33 C.F.R. § 320.4(a)(1). Under the Guidelines, permits are issued only for the least environmentally damaging practicable alternative. 40 C.F.R. § 230.10(a). The Section 404(b)(1) Guidelines issued by the Environmental Protection Agency provide for the specification of disposal sites for dredged or fill material. 40 CFR §§ 230 *et. seq.* The Guidelines establish rebuttable presumptions that (1) alternatives for non-water dependent activities that do not involve wetlands exist and (2) alternatives that do not involve wetlands have less adverse impact on the aquatic environment unless clearly demonstrated otherwise. 40 C.F.R. § 230.10(a)(3). As a non-water dependent project, the burden is squarely on the Applicants to clearly demonstrate that the proposed project is the least environmentally damaging alternative. The proposed project will impact 187.9 acres of wetlands, and the Applicants have not demonstrated that more wetlands could not have been avoided. Under the Guidelines, the Applicants are required to show that the chosen alternative of impacting 187.9

⁷ https://www.postandcourier.com/news/it-s-no-way-to-live-west-ashley-residents-give/article_77a570ca-9a15-11e7-93b4-bf5128c62cd2.html.

⁸ <https://www.nibs.org/news/381874/National-Institute-of-Building-Sciences-Issues-New-Report-on-the-Value-of-Mitigation.htm>.

acres of wetlands is the least environmentally damaging practicable alternative. The Guidelines also require the consideration of impacts on the flood storage capacity of wetlands. Under the Guidelines, a possible loss value of impacting wetlands includes modifying “the capacity of wetlands to retain and store floodwaters and to serve as a buffer zone shielding upland areas from wave actions, storm damage and erosion.” 40 C.F.R. § 230.41(b). The flood storage capacity of the Cainhoy wetlands and the potential for increased flooding as a result of impacting wetlands should be considered in order to comply with Section 404(b)(1) Guidelines.

III. Wetland Mitigation and Avoidance

The Applicants have put together an on-site, Permittee Responsible Mitigation (“PRM”) package that includes the preservation of the Point Hope Nature Sanctuary — 585 contiguous acres of existing and restorable habitat. The preservation and enhancement of this land from the current timber harvesting activities would be part of the acreage considered in the mitigation plan to offset the 187.9 acres of wetland impacts associated with the project. While the Applicants have worked with the Conservation League and other conservation groups to create general goals for a mitigation package, there are discrepancies in the permit calculations that require further clarification. Importantly, although the Applicants tout that they are going well beyond the requirement of the law in their conservation plan, by our calculations the mitigation package presented falls several hundred credits short due to some significant oversights and therefore does not meet the basic requirements of the Clean Water Act.

For example, it appears that the Applicants are counting the 436 acre buffer around wetlands as a separate mitigation area.⁹ The Corps Guidelines for Preparing a Compensatory Mitigation Plan (SOP) states that an upland buffer should only be considered as a mitigation factor, not its own restoration or preservation area.¹⁰ For the purpose of calculating credits, mitigation area should only include wetlands, not uplands. The acreage of the mitigation area itself should not increase with the upland buffer acreage as depicted by the Applicants’ Area 13, found at Application Table 4.6.6, rather an upland buffer factor should be applied to a portion of the preserved wetlands in Area 12.¹¹ In this case, 436 acres of preserved wetlands in Area 12 should receive the benefit of the upland buffer factor, while the other 2,066 acres of wetlands do not receive this credit. Area 13 should therefore not exist as its own mitigation entity, even if the buffer requires some amount of enhancement in order to serve as an effective buffer. Additionally, it has been the Corps’ position on previous projects that a net improvement of 2 or greater must include hydrologic enhancement or restoration. In reviewing the PRM, only the 6.5 acres of tidal creek restoration in Area 11 involve hydrologic restoration.¹² Therefore, based on

⁹ See Application Table 4.6.6.

¹⁰ The Corps SOP states: “Upland buffers are considered part of the proposed mitigation activity. If an aquatic resource is being restored or enhanced, the upland buffer counts toward the total restoration or enhancement mitigation credits. If an aquatic resource is being preserved, the upland buffer counts toward the total preservation mitigation credits.” Page 6 of 19 of Appendix C

[http://www.sac.usace.army.mil/Portals/43/docs/regulatory/Guidelines for Preparing a Compensatory Mitigation Planf.pdf](http://www.sac.usace.army.mil/Portals/43/docs/regulatory/Guidelines%20for%20Preparing%20a%20Compensatory%20Mitigation%20Plan.pdf)

¹¹ See the example upland buffer diagrams on page 8 of SOP Appendix C for further explanation.

¹² See Application Table 4.6.6

the available information submitted by the Applicants, the net improvement in several of these columns is too high and not consistent with previous PRMs or the example given in the SOP.¹³

Finally, the 404 permitting process is meant to be completed in sequences— avoidance, minimization, and lastly mitigation— in order to comply with the Clean Water Act in ensuring no net loss of wetlands. The fact that an application has been submitted for this project shows that the development is viable with 187.9 acres of wetland impacts, and that the remaining wetland acreage is avoidable by definition. A large part of the proposed mitigation package includes credit for 2,502 acres of avoided wetlands.¹⁴ When removing a wetland and its valuable functions from a watershed, you must proportionately offset that impact to ensure the continued health of the watershed. Simply not impacting more wetlands is not a sufficient offset— it is just not making the problem worse. Given this understanding, the Applicants should not be taking credit for these 2,502 acres of avoided wetland impacts preserved merely by deed restrictions in their mitigation package.¹⁵ Further, Section 5.2.1 of the SOP states:

With the possible exception of outstanding aquatic resources that are important on a watershed scale, the preservation of buffer zones, riparian areas, and the remaining aquatic resources on the project site *does not* [emphasis added] meet the preservation criteria identified in the Mitigation Rule (33 CFR 332.3(h)). Therefore, the preservation of these areas does not generate compensatory mitigation credits to offset adverse impacts to aquatic resources.

The avoided wetlands also do not satisfy the preservation criteria because they are not under threat of development.¹⁶ Thereby, mitigation credits should not be generated by merely protecting the avoided wetlands on the site. While these wetlands in question are valuable both ecologically and to the aesthetics and design of the community, their continued presence does not make up for the loss of wetlands elsewhere on the property. The development impacts that are occurring will result in fragmentation and the further degradation of even the unfilled wetlands, making these considerably less valuable and even less viable for mitigation credits.

IV. Endangered Species Act

Section 7 of the Endangered Species Act (“ESA”) requires that each federal agency ensure that any agency action “is not likely to jeopardize the continued existence of any endangered species or threatened species or will result in the destruction or adverse modification” of the species’ critical habitat. 16 U.S.C. § 1536(a)(2). If the agency determines that an action may affect listed species or critical habitat, formal consultation with the U.S. Fish & Wildlife Service (“FWS”) is required. 50 C.F.R. § 402.14(a). The formal consultation process requires the consideration of direct, indirect, and cumulative effects of an action on listed species or critical habitat. *See* 50 C.F.R. §§ 402.14(h)(2), 402.02. Additionally, Section 9 of the ESA makes it unlawful for any person to “take any [endangered] species within the United States

¹³ See the mitigation example provided in the SOP Page 16 Appendix C.

¹⁴ Specifically, 2001.6 credits are given for the Area 12 avoided wetland acreage. See Table 4.6.6

¹⁵ If all of these discrepancies are taken into account, the Applicants have a deficit of 649.70 credits, rather than a surplus with 2,369.5 credits as they calculated.

¹⁶ 33 CFR 332.3(h)

...” 16 U.S.C. § 1538(a)(1)(B). Any action that will result in a “take” of a listed species may not go forward unless the FWS provides an “incidental take” statement, which allows the agency to “take” a limited number of the species so long as the action agency adopts certain criteria conservation measures on behalf of the species. 16 U.S.C. § 1536(b)(4); 50 C.F.R. § 402.14(i).

The Biological Assessment for the Cainhoy project, conducted by the FWS, concluded that threatened, endangered, and at-risk species may be adversely affected by the proposed project and that a formal consultation with the FWS was necessary. *See* Application, Appendix 2 at 28. The FWS compiled a list of 27 endangered, threatened, or at-risk species potentially occurring on the property, including the Frosted Flatwoods Salamander, American Wood Stork, Bald Eagle, Pondberry, West Indian Manatee, Gopher Frog, and Northern Long-Eared Bat. The Cainhoy property provides an expansive area of vital habitat that is home to these and other species. The Cainhoy property also shares a 2-mile border with the Francis Marion National Forest, creating a critical habitat connection with the National Forest.

In particular, the Cainhoy property contains known populations of Red-Cockaded Woodpecker, a federally endangered species. *See* Application, Appendix 2 at 18-27. RCWs are a vital part of the southern pine forest ecosystem. RCWs are primary cavity nesters, meaning they construct cavities in trees which are then used by a variety of other species, including birds, squirrels, frogs, lizards, snakes, and insects.¹⁷ RCWs are considered a keystone species because their cavities contribute to the species richness of the southern pine forests.¹⁸ Unlike other woodpeckers that target dead trees, RCWs create cavities exclusively in mature living pine trees.¹⁹ Their specific habitat needs make the RCW extremely vulnerable to habitat loss. The Cainhoy property contains an extensive area of mature Longleaf pine forest, which is the ideal habitat for RCWs, and it is home to 19 groups of RCWs. The FWS determined that the proposed project may affect and is likely to adversely affect the RCWs present on the property and therefore formal consultation is required. *See* Application, Appendix 2 at 20-21, 33.

The Applicants intend to “take” all the RCWs on the property. The Cainhoy property is enrolled in the South Carolina Department of Natural Resources (“SCDNR”) RCW Safe Harbor Program which provides for a baseline population of 11 RCW groups, allowing an incidental take of any above-baseline groups with 60 day notice to SCDNR and without a formal consultation process. Applicants intend to take all above-baseline groups, and have also applied for an incidental take permit for all the 11 baseline RCW groups on the property. *See* Application, Appendix 6 at 1. In response to these impacts, the Applicants have proposed a mitigation plan based on the completed translocation of RCW groups from the Francis Marion National Forest to three private properties in the Ace Basin and Hitchcock Woods. The Conservation League is skeptical as to how this plan minimizes impacts on the Cainhoy property when the translocated RCW groups were taken from the Francis Marion National Forest.

As discussed above, the Cainhoy property’s southern pine forest ecosystem provides an ideal habitat for RCWs. The Cainhoy RCW populations are adjacent to the Francis Marion

¹⁷ U.S. Fish & Wildlife Service, Red-Cockaded Woodpecker Recovery, <https://www.fws.gov/rcwrecovery/rcw.html>.

¹⁸ *Id.*

¹⁹ *Id.*

National Forest, which contains a large and thriving RCW population with 488 active groups.²⁰ In contrast, the small minimization areas in the Ace Basin and Hitchcock Woods do not contain the same high quality habitat as Cainhoy and the RCW populations will always remain small with little resiliency to threatening forces like storms and nearby development.²¹ Unlike Cainhoy, which has 100% natural cavities, the cavities at the minimization sites are 100% artificial which require maintenance and management.²² While the small populations that have been reintroduced at the minimization sites have done relatively well, there are indications of weak population growth.²³ The relocation process was conducted by Applicants without any NEPA or ESA review, and with no opportunity for public comment on the possible impacts of the mitigation efforts.

It is critical that a large, contiguous area on the Cainhoy property is protected to provide important habitat and to support the continued existence of RCWs and other threatened, endangered, and at-risk species. The adverse impacts to and potential takings of federally protected species, along with any conservation efforts, must be carefully examined through the formal consultation process before the Corps can approve this permit. In particular, the FWS must conduct a thorough review of the Applicants' proposed RCW minimization plan to evaluate whether the completed translocation is appropriate and sufficient mitigation for the significant impacts to RCWs on the Cainhoy property. The Conservation League looks forward to participating in the anticipated formal consultation process.

V. Prescribed Fire and Smoke Easements

The U.S. Forest Service must routinely conduct controlled burns in the adjacent Francis Marion National Forest to maintain the valuable Longleaf pine forests and other key habitats. These prescribed fires are critical to maintaining healthy fire-dependent ecosystems and improving wildlife habitat. Many plant and animals species within the National Forest depend on periodic fires to preserve their ideal habitat, including RCWs. Prescribed fires also decrease the likelihood of dangerous uncontrolled wildfires by reducing understory growth within the forest. For these reasons, it is crucial to the responsible management of the National Forest for the Forest Service to continue to apply prescribed fires in the forests adjacent to the proposed Cainhoy project.

In recognition of the importance of prescribed fires, the Applicants propose fire and smoke easements for the property which require each owner and occupant of the property to acknowledge and understand that prescribed fires will be conducted and may result in smoke and particulate matter damage and inconvenience. Application 3.5.7. The Conservation League believes these easements are critical to allow for the continued effective management of the National Forest. The Conservation League stresses that these easements should be recorded in order to ensure that future owners and occupants of the property will have notice of the prescribed fires and will also be bound by the provisions of the easements.

²⁰ South Carolina Department of Natural Resources, Comment Letter to Corps Regarding Cainhoy Project, May 3, 2018, at 3.

²¹ *Id.* at 4.

²² *Id.*

²³ *Id.*

VI. Docks

The proposed project provides that future phases of development will include individual lots that qualify for docks, and that a dock masterplan will be developed and submitted to SCDHEC-OCRM for approval at that time. Application 6.1. A significant number of lots appear eligible for docks and the construction of these individual docks has the potential to be a major source of cumulative impacts. Without additional information regarding the number, location, and impacts of proposed docks, the public is unable to make informed comments on the potential impacts and degradation caused by the project's docks. The Conservation League is particularly concerned with the placement of docks in fragile aquatic habitats such as oyster restoration sites, erosional areas, and smaller tidal creeks. Limitations should be included to prohibit dock placement in those areas. In general, the Conservation League opposes the construction of a large number of individual docks and encourages the use of community and joint use docks to reduce the number of docks constructed.

Additionally, the Applicants state that the lots that qualify for docks will be excluded from the mitigation plan. Application 6.1. However, based on figure 4.6.16, the number of preserved wetlands appears to include wetlands which are adjacent to qualifying lots and therefore excluded from the mitigation plan. The Applicants cannot include these wetlands in their estimates for preservation while excluding them from the mitigation plan and from inclusion in the restrictive covenants. All wetlands adjacent to lots qualifying for docks should be removed from the Applicants' preservation calculations. The Applicants should consider modifying the limitations and on any future dock construction.

VII. Impoundments

The proposed project calls for the excavation of 31.6 acres of wetlands for stormwater retention pond construction.²⁴ The Conservation League discourages the destruction of vegetated wetlands for the creation of open water ponds for stormwater management purposes. These vegetated wetlands provide critical ecological functions, including natural stormwater storage. The use of stormwater impoundments should be limited, and any new stormwater impoundment should not be placed within valuable wetland areas that already act to control and manage stormwater. There are several existing impoundments on the property that provide important wildlife habitat. The existing impoundments should be actively managed to maintain these wildlife resources.

VIII. Connectivity and Community Preservation

The sheer size of the proposed Cainhoy Plantation development cannot be reviewed as an isolated project that exists within contained boundaries. The impact of a mixed-use development that intends to add at least 9,000 residential units to a currently undeveloped area along with thousands of square feet of commercial space is the equivalent of a new city. This will provide numerous impacts to the surrounding area – both positively and negatively – and must be taken into consideration as part of this Federal review. In addition to the specific concerns below, the

²⁴ South Carolina Department of Natural Resources, Comment Letter to Corps Regarding Cainhoy Project, May 3, 2018, at 2.

EIS should examine how the addition of 9,000 new residential units in the region will impact traffic patterns, existing roads, transportation planning, and other nearby communities, such as Mount Pleasant.

a. Nelliefield Plantation

The property to the south of Clements Ferry Road is adjacent an existing neighborhood known as Nelliefield Plantation. This community is the closest beneficiary of the new schools that have already been constructed on the Cainhoy property. Every effort must be made to provide bicycle, pedestrian, and automobile connections between the existing and proposed communities. Clements Ferry Road is a heavily traveled and dangerous corridor, making the opportunity for the Nelliefield residents to be able to internally traverse to and from the existing schools, residential neighborhoods, and commercial districts of the utmost importance.

b. Jack Primus Community

Following emancipation after the Civil War, the newly freed African Americans that had been enslaved on plantations like Cainhoy were able to buy their own land and establish free, self-sustaining farming communities. The Jack Primus community adjacent to Cainhoy Plantation, north of Clements Ferry Road, is an example of a traditional African American settlement community that is still primarily inhabited by descendants of the formerly enslaved peoples on the Cainhoy Plantation.

The Jack Primus community is historically and culturally significant for its intact land use and settlement patterns, which still reflect a tradition of long narrow multi-acre lots that often have multiple homes inhabited by several generations of family members. This community, like many of the Lowcountry's settlement communities, is threatened by encroaching development. Increased development raises the risk of higher property values and taxes which may put pressure on the residents to sell their ancestral lands.

The proposed Cainhoy Plantation development has an opportunity to mitigate the risk of displacement Jack Primus community residents by locating low-income and affordable housing around Jack Primus Road to promote a diversification of housing types that transition from the rural settlement community land-use pattern to the more suburban-style development proposed by this application. The City of Charleston is requiring the Applicants provide low-income housing near the northern-most boundary of the property, adjacent St. Thomas Church. However, there should also be designated affordable and low-income housing near the Jack Primus community to provide a buffer to this historic African American settlement community.

c. African American Cemetery

There is an African American cemetery located near the house constructed by Harry Frank Guggenheim in the 1930s. The Cainhoy landowners have demonstrated a willingness to work closely with the Jack Primus community and the application has avoided the inclusion of roads through this area. The area surrounding the cemetery and general location of the

Guggenheim house is historically associated as the location of former slave cabins and warrants a conservation easement to prevent future development from encroaching on this sacred area.

In conclusion, the points we have outlined above demonstrate that a project of this magnitude, considering its impact on valuable environmental and cultural resources and its significance to the region, would be best served by the preparation of an EIS and by the involvement of the public that comes with the EIS process. Thank you for considering these comments.

Sincerely,

A handwritten signature in dark ink, appearing to read "C. DeScherer", with a long horizontal flourish extending to the right.

Christopher K. DeScherer

cc (via e-mail only): Pace Wilber, NMFS
Kelly Laycock, EPA Region 4
Susan Davis, SCDNR
Blair Williams, DHEC
Chuck Hightower DHEC
Jason Crowley, CCL
Emily Cedzo, CCL
Tom McCoy, FWS